BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

BRIAN M. BORLAND
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-366
Case No. 77-3852

S.S.A. No.

HEALTH, EDUCATION & WELFARE
(Employer-Appellant)
Central Payroll Office

Employer Account No. (Not Shown)

Office of Appeals No. SF-UCFE-5689

The Department appealed from the decision of an administrative law judge which held the claimant was not disqualified from unemployment compensation benefits for federal employees under the separation provisions of the California Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant last worked as an administrative clerk for the above federal agency from January 1974 to December 17, 1976 at which time he resigned. By the time of termination the claimant was receiving $10,233 per year at an hourly rate of $4.91.

The claimant had accumulated seven years' service with the federal government which included his enlistment with the United States Coast Guard. He obtained his discharge in 1972. Prior to his separation from the United States Coast Guard, the claimant had taken a maritime examination and obtained papers as a seaman.

In September 1976 the claimant completed an application for work with an oil company and submitted it, together with a resume, setting forth his qualifications. In October the claimant's uncle, a Chief Warrant Officer in the Coast Guard, attached to the Maritime Inspection Office in Florida, advised the claimant of the possibility of employment through the establishment of a new list of eligibles. The claimant was further advised that possible employment would be extended to him during the second or third week of January.

Without contacting the oil company itself or attempting to establish himself in any maritime union, the claimant submitted his resignation to the above agency, assigning the following reasons:

> "Resignation. I am presently on the Merchant Marine sailing list, & expect to go with [sic] the next month. I will not be guaranteed a two week notice, so I am resigning ahead of schedule so that the appropriate time notice can be given."

The claimant explained that his experience with federal agencies established that a minimum two-week notice was desirable if an employee was to retain his rights of reinstatement.

Effective January 16, 1977 the claimant registered with the Employment Development Department to establish his benefit year. During the ensuing investigation, the claimant for the first time contacted the oil company where he wished to become employed. He received the following response:

> "It is very regrettable you resigned a job on the premise of getting a job aboard one of our vessels merely after filing an application. We have a small fleet consisting of only 5 vessels, and our turnover in personnel is not great. The ratio of persons actually getting employment as compared with the number of employment applications received is very small.
>
> "I have checked our records and we do have your original application on file, along with your resume. It was filed September 21, 1976. As with all other applications received, yours

> is presently on file and certainly classed as an eligible. If and when an opening does occur, you will be given every consideration to fill the opening. Your geographical location is not in your favor in that in many cases, we only get a matter of hours advance notice of an opening."

Terms and conditions of employment had never been discussed with the prospective employer. The claimant had conjectured, based upon the work experience of an acquaintance, that he would be receiving approximately $1,500 per month while at sea. The basic union wage as revealed by the current bargaining agreements under which the maritime union members work was $791 per month.

REASONS FOR DECISION

Section 8502, Title 5, United States Code, together with supplementing regulations, provides for the payment of unemployment compensation benefits to former federal employees. Although wholly funded by the federal government, eligibility for such benefits must be determined in keeping with the laws of the state to which the wage credits have been assigned, in this instance California.

Section 1256 of the California Unemployment Insurance Code provides that a claimant shall be disqualified from benefits if he has left his most recent work voluntarily without good cause.

Good cause for leaving work is undefined by the legislature. The term, however, has been construed by the District Court of Appeal in California Portland Cement Company v. California Unemployment Insurance Appeals Board (1960), 178 Cal. App. 2d 263, 3 Cal. Rptr. 37. There the court cited with approval the following language in Bliley Electric Company v. Board of Review (1946), 158 Pa. Super. 548, 45 A. 2d 898:

> "'Voluntarily' and 'involuntarily' are antonymous and therefore irreconcilable words, but the words are merely symbols of ideas, and the ideas can be readily reconciled. Willingness, wilfulness, volition, intention reside in 'voluntarily,' but the mere fact that a worker wills and intends to leave a job does not necessarily and always mean that the leaving is voluntary. Extraneous factors, the

surrounding circumstances, must be taken into the account, and when they are examined it may be found that the seemingly voluntary, the apparently intentional, act was in fact involuntary. A worker's physical and mental condition, his personal and family problems, the authoritative demand of legal duties, -- these are circumstances that exert pressure upon him and imperiously call for decision and action.

"When therefore the pressure of real not imaginary, substantial not trifling, reasonable not whimsical, circumstances compel the decision to leave employment, the decision is voluntary in the sense that the worker has willed it, but involuntary because outward pressures have compelled it. Or to state it differently, if a worker leaves his employment when he is compelled to do so by necessitous circumstances or because of legal or family obligations, his leaving is voluntary with good cause, and under the act he is entitled to benefits. The pressure of necessity, or legal duty, or family obligations, or other overpowering circumstances and his capitulation to them transform what is ostensibly voluntary unemployment into involuntary unemployment."

Portland Cement Company was subsequently cited with approval, without expansion, in Perales v. Dept. of Human Resources Development (1973), 32 Cal. App. 3d 332, 108 Cal. Rptr. 167, and Morrison v. CUIAB (1976), 65 Cal. App. 3d 245, 134 Cal. Rptr. 916.

In Zorrero v. UIAB (1975), 47 Cal. App. 3d 434, 120 Cal. Rptr. 855, the court again relied on the California Portland Cement case as a proper interpretation of legislative intent as it related to the definition of "good cause." Recognition was accorded the fact that the policy guidelines established by the legislature for the payment of unemployment compensation benefits intended that those claimants who were involuntarily unemployed should benefit from the legislation (section 100, CUIC). It was therein held, in part, that although an employee voluntarily leaves work he is still entitled to benefits if he left his job with good cause which may be for wholly personal reasons. However, those reasons must be so imperative

and compelling as to in effect convert the voluntary termination into involuntary unemployment. The court went on to state:

> "In general 'good cause,' as used in an unemployment compensation statute, means such a cause as justifies an employee's voluntarily leaving the ranks of the employed and joining the ranks of the unemployed; the quitting must be for such a cause as would reasonably motivate in a similar situation the average able-bodied and qualified worker to give up his or her employment with its certain wage rewards in order to enter the ranks of the compensated unemployed. (81 C.J.S. Social Security and Public Welfare § 167, p. 253.)" (See also Evenson v. CUIAB (1976), 62 Cal. App. 3d 1005; 133 Cal. Rptr. 488, which not only approved but reiterated the expanded language.)

In considering a voluntary separation from one employment for the purpose of accepting other work this Board found good cause for such termination where the acceptance of the new employment was substantially more remunerative considering all conditions of employment (Appeals Board Decisions Nos. P-R-91 and P-B-123 (benefits denied on other grounds)).

In Appeals Board Decision No. P-B-277 this Board considered a case where the claimant had been given notice of potential employment with a substantially greater salary. The claimant applied for the job and was hired with a specific commencement date. After having left work the circumstances under which the claimant was to begin altered and employment could not be extended to the claimant. It was nevertheless found that the claimant had left work voluntarily with good cause. It was pointed out that she had attempted to assure herself of continuing employment and that the unemployment was attributable solely to the failure of the new employer to provide the promised employment. In so concluding we carefully distinguished such facts from those circumstances where a claimant leaves work solely to seek more advantageous employment, the distinguishing factor being the certainty of the commencement of the new employment.

In Appeals Board Decision No. P-B-11 the Board specifically held that leaving work merely to pursue other possibilities of more desirable employment was a leaving without good cause.

Considering the facts developed in the instant case in light of the authorities cited above, we are constrained to conclude that this claimant left work voluntarily without good cause. Certainly it must be conceded that the work for which the claimant applied was more desirable than that which he previously held. Additionally, the evidence establishes that work as a merchant seaman would have been substantially more advantageous to the claimant than his employment with the federal government. The claimant, however, had no reasonable basis to conclude that he had been extended an offer of work with the oil company he wished to join. He had merely filed an application for potential employment, and in the exhibit introduced by the claimant from the prospective employer it was clearly indicated that the claimant's possibilities of obtaining such employment in the immediate future were limited, however acceptable his services might have been. The claimant's reliance upon the representation of his uncle without first corroborating such information with the prospective employer is unrealistic. We find, therefore, that the claimant left work for personal, noncompelling reasons under California law.

DECISION

The decision of the administrative law judge is reversed. The claimant is disqualified from benefits under section 1256 of the California Unemployment Insurance Code.

Sacramento, California, October 4, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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